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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 809

J. H. ANDERSON,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

M. W. EGERTON,
Counsel for Petitioner.

INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Summary statement of matters involved	1
The complaint	1
The answer	2
The facts	2
The opinion of the District Court	4
The appeal and decision on appeal	5
Federal statute involved	5
Jurisdiction	6
The questions presented	6
Reasons relied on for the allowance of the writ	8
Prayer and conclusion	10
Brief	11
Opinions of the courts below	11
Jurisdiction	11
Statement of the case	12
Specification of error	12
Summary of the argument	13
Argument	18
A. The writ should be granted because of the conflict between the decision of the Circuit Court of Appeals herein holding that income from a trust, which, pursuant to the terms of the trust, is devoted to a religious cause, giving non-material satisfaction to the grantor is the equivalent of income from a trust devoted to family purposes and the decision of this Court in the case of Helvering vs. Stuart, supra.	13, 14, 18
B. The writ should be granted because of the conflict between the decision of the Court of Appeals herein holding that a finding under the facts by the District Judge that income of a trust is not income of the grantor thereof, within the meaning of Sec. 22(a) of the Revenue Act of 1934,	

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Page

supported by substantial evidence, is subject to review as a mixed question of law and fact by a Court of Appeals and not for errors of law only and the decisions of this Court in the cases of Helvering vs. Clifford, supra, Hormel vs. Helvering, supra, and Helvering vs. Stuart, supra, and because the decision herein is in direct conflict with a decision of the same matter by the Circuit Court of Appeals for the Seventh Circuit in the case of Commissioner vs. Williamson, supra 15, 20

C. The writ should be granted because of the conflict between the decision of the Circuit Court of Appeals herein reversing the District Court and holding as a matter of law or a mixed question of law and fact that the reservation of insubstantial powers by the grantor of an irrevocable trust for a term beginning July 21, 1931 and ending January 1, 1937, not exercised or reserved for any purpose or use other than the protection of the beneficiary, where the income from the trust was paid pursuant to the terms of the trust agreement to the beneficiary thereof for religious purposes, and the grantor, neither directly nor indirectly, received any economic gain, was nevertheless the income of the grantor under Section 22(a) of the Revenue Act of 1934, and the decision of this Court in the cases of Helvering vs. Clifford, supra; Hormel vs. Helvering, supra; Helvering vs. Stuart, supra, and because the decision herein is in direct conflict with a decision by the Circuit Court of Appeals for the Second Circuit in the case of Commissioner vs. Chamberlain, 121 F. (2d), 765 ..... 16, 25

Conclusion 31

CITATIONS.

CASES.

Page

Achelis v. *Helvering*, 112 F. (2d), 929 ..... 26, 30
Commissioner v. *Branch*, 114 F. (2d), 985 ..... 17, 28
Commissioner v. *Brown*, 122 F. (2d), 800 24
Commissioner v. *Chamberlain*, 121 F. (2d), 765 ..... 10, 18, 26
Commissioner v. *Goulder*, 123 F. (2d), 686 ..... 15, 24
Commissioner v. *Williamson*, Circuit Court of Appeals, Seventh Circuit, decided Dec. 29, 1942, not officially reported 8
Helvering v. *Bok*, Circuit Court of Appeals, Third Circuit, decided Dec. 9, 1942, not officially reported ... 30
Helvering v. *Clifford*, 309 U. S. 331 ..... 8, 9, 12, 17, 26
Helvering v. *Eubank*, 311 U. S. 122 30
Helvering v. *Horst*, 311 U. S. 112 ..... 8, 12
Helvering v. *Rankin*, 295 U. S. 123 ..... 21, 26
Helvering v. *Richter*, 312 U. S. 561 ..... 16, 21, 26
Helvering v. *Stuart*, 63 Sup. Ct. 140 ..... 8, 9, 17
Helvering v. *Wood*, 309 U. S. 344 18
Hormel v. *Helvering*, 312 U. S. 552 ..... 8, 9
Pierce v. *U. S.* (*D. C. Minnesota*), decided March 11, 1942, not officially reported 30
Reinecke v. *Northern Trust Co.*, 278 U. S. 339 ..... 17, 26, 28

STATUTES.

Code of Tennessee, Sec. 9573 28
Code of Tennessee, Sec. 9596. 1 27
Revenue Act of 1934, ch. 277, 48 Stat. 680 (U. S. C. Title 26, Sec. 22) 6
U. S. C. A. Title 28, Sec. 347 ..... 6, 12

RULES OF COURT.

Federal Rules of Civil Procedure, Rule 52(a) 17

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 809

J. H. ANDERSON,
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vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

I

Summary Statement of Matters Involved.

THE COMPLAINT

This is a suit brought by petitioner in the District Court of the United States for the Eastern District of Tennessee against the respondent for the recovery of income taxes erroneously and illegally collected from petitioner for the calendar year 1935, which taxes had been assessed and collected by reason of the Commissioner including as income of petitioner, the income of an irrevocable term trust established by petitioner for a term beginning July 21, 1931 and

ending January 1, 1937, the income from which was used for religious purposes, as provided in the trust agreement (R. 1-4).

The Answer

The respondent admitted the execution of the trust indenture but denied that the tax had been illegally assessed and collected (R. 6, 7).

The Facts

The case was tried on a written stipulation, the statements in which were true (R. 8). These statements (omitting those concerned with the payment and claim for refund of the tax) are as follows:

> "3. Plaintiff, on July 21, 1931, by indenture bearing that date, created a trust of the corpus of his deceased wife's estate for the benefit of the First Baptist Church of Knoxville, Tennessee, of which plaintiff and his deceased wife, until the time of her death, had been members. Plaintiff has continued to be a member of that Church since that time. The term of the trust was from July 21, 1931 to January 1, 1937, and was irrevocable during that period.
>
> "4. Plaintiff appointed the Hamilton National Bank of Knoxville, Tennessee, as trustee of the trust, and the Hamilton National Bank accepted such appointment as trustee. A copy of such trust indenture executed by plaintiff and the Hamilton National Bank, as trustee, is filed as Exhibit 2 hereto and is made a part hereof.
>
> "5. Plaintiff transferred and delivered the corpus of his deceased wife's estate to the Hamilton National Bank as trustee under the trust indenture. A copy of the receipt of the Hamilton National Bank of the corpus is attached hereto as Exhibit 3 and made a part hereof.
>
> "6. The Hamilton National Bank, as trustee, managed the trust estate, collected the income therefrom, and annually distributed the net income to the First Baptist Church of Knoxville, Tennessee, according to

the provisions of the trust indenture. The said First Baptist Church is an association, organized and operated exclusively for religious and charitable purposes, no part of the net earnings of which inures to the benefit of the plaintiff, or any other members or individuals, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and is exempt from taxation under the Revenue Act of 1934.

"7. No part of the income of the trust was distributed to plaintiff or any member of his family, or was used to discharge any legal obligation of plaintiff or his family, or to pay premiums for insurance on the life of plaintiff or his family."

Exhibit 3 to the stipulation (R. 9, Item 5, R. 45) shows that the corpus of the trust received by the trustee consisted of various stocks having a par value of $161,000.00; and notes, bonds and cash having a face value of $147,000.00. No notes or bonds executed by the grantor of the trust were among the securities so held.

Exhibit 2 to the stipulation (R. 8-9, Item 4, R. 42), the trust indenture, is summarized as follows:

The indenture is dated July 21, 1931, and is between petitioner and the Hamilton National Bank of Knoxville, as trustee.

The reason for the creation of the trust is set out as the desire of petitioner to aid and assist the First Baptist Church of Knoxville, Tennessee, in its contributions to the cooperative program of the Southern Baptist Convention.

The corpus of the trust is created by the transfer and delivery to the trustee of securities and personal property.

The first paragraph provides for the trustee to collect the income from the corpus and pay it, less expenses and the fee of the trustee, to the First Baptist Church.

The second paragraph authorizes the trustee to invest, reinvest and exchange the securities of the trust for others

of equal value, but "in order that the settlor may safeguard the interest of the beneficiary" before exercising this power the trustee must obtain the approval of the settlor, or, in the event of his death, the approval of his executor.

The third paragraph reserves to the petitioner the right to vote all stocks held by the trustee "in order to enable the settlor to safeguard the interest of the beneficiary".

The fourth paragraph provides that stock dividends, if any, shall be considered principal.

The fifth paragraph provides that the trust is irrevocable for its term ending January 1, 1937, and for the transfer of the then corpus of the trust upon termination to the settlor or his executors.

The sixth paragraph authorizes the trustee to retain as part of the corpus any security originally deposited, without liability for depreciation in value, and permits the trustee to resign at any time upon thirty days' notice.

The seventh paragraph gives the settlor the right to change the trustee and provides that any successor trustee "shall undertake to perform the duties and obligations imposed upon the trustee herein".

The eighth paragraph provides for compensation to the trustee for its services and excuses qualification, bond and settlement as required by law.

The agreement is then executed by the parties on July 21, 1931.

The Opinion of the District Court

The District Court awarded petitioner a judgment, finding as a matter of fact, that the sole income from the corpus of the trust estate was paid to the cestui que trust, no legal duty resting upon the setlor to contribute any amount of the cestui que trust, and no part of the income or corpus, during the life of the trust, being diverted to any direct or

indirect legal reponsibility of the settlor; that the petitioner, in fact, received no economic gain and non-material satisfaction could not be substituted for economic gain; that the corpus of the trust was transferred and delivered to the trustee and that the trustee, in fact, was the sole administrator of the property and none of the controls reserved in the settlor were exercised; that these reserved powers were insubstantial and short of an effective retention of ownership (R. 14-15).

The Appeal and Decision on Appeal

The respondent appealed to the United States Circuit Court of Appeals for the Sixth Circuit, which Court, on December 2, 1942, reversed the decision of the District Court, holding (a) that the question of ownership, within the meaning of Sec. 22 (a) of the Revenue Act of 1934, was a question of law, or at least a mixed question of law and fact, and that a finding of fact by the District Court that petitioner was not the owner of the corpus of the trust, was subject to review on appeal as a conclusion of law (R. 23); (b) that the trust instrument involved established a technical trust only (R. 25); (c) that the use of the income for religious purposes, giving the settlor non-material satisfaction, was the equivalent of a use for family purposes; and (d) that petitioner remained the owner of the income of the trust, within the meaning of Sec. 22 (a) under the standards of the Horst and Clifford cases (R. 26).

Federal Statute Involved

The Federal statute involved is Sec. 22 (a) of the Revenue Act of 1934, reading as follows:

"Sec. 22. Gross Income.

(a) General Definition—'Gross income' includes gains, profits, and income derived from salaries, wages

or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly."

Revenue Act of 1934, Ch. 277, 48 Stat. 680 (U. S. C. Title 26, Sec. 22).

II

Jurisdiction.

The Court has jurisdiction to review the judgment of the Circuit Court of Appeals under Title 28 U. S. C. A., Sec. 347. The judgment of the United States Circuit Court of Appeals for the Sixth Circuit sought to be reviewed was rendered December 2, 1942 (R. 21); a petition to rehear having been seasonably filed, was denied on February 2, 1943 (R. 41); and the judgment became final on that date. This petition, together with a certified transcript of the record is filed in this Court within three months after said judgment became final.

III

The Questions Presented.

1. Is the question as to whether or not the grantor of a trust remains the owner of the corpus of the trust and taxable on the income thereof under Sec. 22 (a) of the Revenue Act of 1934, a question of fact to be determined by the trier

of the facts in accordance with the applicable principles of law, and, if supported by substantial evidence, subject to review by an appellate court for errors of law only, or is the issue one of law or mixed law and fact on which a Court of Appeals can made a new finding?

The Circuit Court of Appeals held herein that the issue was one of law—or mixed law and fact, and thereupon made a new finding, reversing the lower court.

Petitioner insists that the question is one of fact, and if the finding of the lower court is supported by substantial evidence, it is reviewable for errors of law only.

2. Does the grantor of a trust remain the owner of the corpus of the trust and taxable on the income thereof under Sec. 22 (a) of the Revenue Act of 1934, where the facts stipulated and found by the District Court, and not set aside by the Appellate court, were:

(a) That the trust was irrevocable and created for a term beginning July 21, 1931, and ending January 1, 1937.

(b) That the title to and possession of the corpus was transferred and delivered to the trustee and the trustee managed the trust estate.

(c) That the income of the trust was paid by the trustee, pursuant to the terms of the trust agreement, to a religious association for religious purposes and no part thereof was subject to any control of, or direction by, the grantor, and the grantor received no economic gain therefrom—but only non-material satisfaction.

(d) That no controls over the corpus reserved by the settlor were, in fact, exercised or reserved for any purpose other than the protection of the beneficiary and consisted only of (1) the power to veto changes in and reinvestments of the corpus; (2) the power to amend proxies to vote stocks, and (3) the power to substitute trustees, but any substitute trustee to be bound by the terms of the trust indenture.

The District Court answered this question "No."

The Circuit Court of Appeals answered this question "Yes."

Petitioner insists that it should be answered "No."

IV

Reasons Relied On for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals herein holding that the question as to whether or not the grantor of a trust remains the owner of the corpus and taxable on the income thereof under Sec. 22 (a) of the Revenue Act of 1934 is a question of law, or a mixed question of law and fact on which a Court of Appeals can make a new finding is a decision of a Federal question in a way probably contrary to the applicable decisions of this Court, including:

Helvering vs. *Clifford, 309 U. S. 331;*
Hormel vs. *Helvering, 312 U. S. 552;*
Helvering vs. *Stuart, 63 S. Ct. 140.*

2. The decision on this matter is in conflict with the decision of the Circuit Court of Appeals for the *Seventh Circuit* on the same matter in the case of *Commissioner* vs. *Williamson,* decided December 29, 1942, not yet officially reported.

3. The decision of the Circuit Court of Appeals herein holding that the income of a term trust devoted to religious purposes, giving only non-material satisfaction to the grantor, is substantially equivalent to income from such a trust devoted to family purposes and thereby taxable to the grantor under the standards set in the cases of *Helvering* vs. *Horst,* 311 U. S. 112 and *Helvering* vs. *Clifford,* 309 U. S. 331, is a decision of a Federal question in a way probably in conflict with the applicable decision of this Court in the case of *Helvering* vs. *Stuart,* 63 S. Ct. 140.

4. The decision of the Circuit Court of Appeals herein holding that the grantor of a trust remained the owner

of the corpus of the trust and taxable on the income thereof under Sec. 22(a) of the Revenue Act of 1934, as a conclusion of law or a mixed question of law and fact, where the facts as stipulated and found by the District Judge and not set aside by the Appellate Court, were:

(a) That the trust was irrevocable and created for a term beginning July 21, 1931 and ending January 1, 1937.

(b) That the title to and possession of the corpus was transferred and delivered to the trustee and the trustee managed the trust estate.

(c) That the income of the trust was paid by the trustee, pursuant to the terms of the trust agreement, to a religious association for religious purposes and no part thereof was subject to any control of, or direction by, the grantor, and the grantor received no economic gain therefrom—but only non-material satisfaction.

(d) That no controls over the corpus reserved by the settlor were, in fact, exercised or reserved for any purpose other than the protection of the beneficiary and consisted only of (1) the power to veto changes in and reinvestments of the corpus; (2) the power to demand proxies to vote stocks, and (3) the power to substitute trustees, but any substitute trustee to be bound by the terms of the trust indenture.

is a decision of a Federal question in a way probably contrary to the applicable decisions of this Court, including:

Helvering vs. *Clifford,* 309 U. S. 331;
Helvering vs. *Stuart,* 63 S. Ct. 140;
Hormel vs. *Helvering,* 312 U. S. 552.

5. The decision on this matter is in conflict with the decision of the Circuit Court of Appeals for the *Second*

Circuit in the case of *Commissioner* vs. *Chamberlain*, 121 F. (2d) 765.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court of Appeals for the Sixth Circuit had in the case numbered and entitled on its docket, No. 9085, United States of America, Appellant, vs. J. H. Anderson, Appellee, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the Sixth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated —— —, 1943.

J. H. ANDERSON,
By M. W. EGERTON,
Counsel for Petitioner.